

H. W. ROBERTS

IBLA 82-900

Decided November 30, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M 53796.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly rejected where the application is dated prior to commencement of the filing period.

APPEARANCES: John B. Lowy, Esq., New York, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

H. W. Roberts appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 17, 1982, rejecting his simultaneously filed oil and gas lease application M 53796 because its date did not reflect that it was signed within the filing period. The filing period in question was from November 2, 1981, to November 23, 1981. Appellant's application was dated November 1, 1981.

In his statement of reasons, appellant contends that the application was timely filed and since dated on a Sunday, November 1, 1981, should be deemed dated on the next working day, November 2, 1981, pursuant to accepted legal principles; that the failure to date the application within the filing period causes no harm to any party or public interest; that enforcement of the dating requirement in this case involving a one day discrepancy is arbitrary, capricious and an abuse of discretion because of the prior inconsistent application of the rule; that the application should be accepted because of the lack of notice to appellant that the failure to date the application during the filing period would result in the rejection of the application.

The regulation, 43 CFR 3112.2-1(c), states in part, "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period."

[1] It is well established that a drawing entry card which is not properly dated in the space provided on the card must be rejected. Sorensen v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978), aff'g Walter M. Sorensen, 32 IBLA 345 (1977). The Board has affirmed the rejection of applications which bear a date prior to the filing period. Leonard Thompson, 62 IBLA 236 (1982); Herbert W. Winston, 61 IBLA 199 (1982); Grace Grant, 58 IBLA 366 (1981). Appellant's argument that under acceptable legal principles, dating the card on Sunday, November 1, 1981, should be deemed dating it on Monday, November 2, 1981, is without merit. Regulation 43 CFR 3112.2-1(c) specifically provides that the application be dated within the filing period. Contrary to appellant's assertions, the rights of other parties are involved. Strict compliance with the regulations governing the drawing, 43 CFR Subpart 3112, is enforced to protect the rights of the second and third drawn qualified offerors. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Regulation 43 CFR 3112.2-1(c) became effective June 16, 1980. 45 FR 35156 (May 23, 1980), and no instances appear indicating that this regulation has not been applied consistently since it became effective. 1/

Appellant argues that no notice was given that failure to date the application properly would result in rejection of the application. Appellant refers to 43 CFR 3112.6-1, which provides that "[a]ny application which is not filed in accordance with § 3112.2 of this title \* \* \* shall be rejected." (Emphasis added.) Appellant contends that the word "file" in 43 CFR 3112.6-1 refers to the language in 43 CFR 3112.2-1(a) which provides that an application must be "completed, signed and filed pursuant to the regulations in this subpart." Appellant contends that this regulation, 43 CFR 3112.6-1, does not apply to improperly dated regulations. We disagree. The regulation for rejecting applications, 43 CFR 3112.6-1, refers to applications "not filed in accordance with § 3112.2 of this title." The language in 43 CFR 3112.6-1 is not limited to 43 CFR 3112.2-1(a), but includes all of 43 CFR 3112.2, of which 3112.2-1(c) is part. Therefore, 43 CFR 3112.6-1 is applicable, and appellant's application was properly rejected because the date on the application did not reflect that the application was signed within the filing period as required by 43 CFR 3112.2-1(c). Walter Adomkus, 67 IBLA 177 (1982).

---

1/ We are aware of a recent Tenth Circuit decision, Ahrens v. Andrus (C.A. 10), No. 80-1901, Oct. 13, 1982, in which Judge Doyle ruled that the only material date is the one on which the card is filed with the Department of the Interior. We note, however, that the Ahren's case is distinguishable from the case in issue, because the application in the Ahren's case was filed prior to the effective date of the present regulation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Anne Poindexter Lewis  
Administrative Judge

We concur:

---

Gail M. Frazier  
Administrative Judge

---

Douglas E. Henriques  
Administrative Judge

